

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

NINA V. CRYTSEER,

Plaintiff,

-vs-

UNITED STATES OF AMERICA,

Defendant.

NO. CV-06-175-LRS

**ORDER GRANTING THE UNITED  
STATES' MOTION TO DISMISS**

BEFORE THE COURT is Defendant United States' Motion to Dismiss for Lack of Subject Matter Jurisdiction and For Failure to State a Claim for Which Relief Can Be Granted (Ct. Rec. 5) filed on August 31, 2006 and noted without oral argument on October 11, 2006.

**BRIEF SUMMARY OF FACTS**

Plaintiff Nina V. Crytser filed this action on June 12, 2006, alleging the wrongful and illegal seizure of funds by the Internal Revenue Service ("IRS") and seeking the recovery of \$105,161.76 plus interest, additional damages, attorneys' fees and costs. Plaintiff alleges that the IRS wrongfully seized \$105,161.76 from the escrow account for the sale of real property located at 7409 East 44<sup>th</sup> Avenue, Spokane County, Washington ("Subject Property").

On August 17, 1999, and incident to marriage on August 18, 1999, Plaintiff and Scott Crytser entered into a Prenuptial Agreement ("Agreement"). The Agreement provided that after Plaintiff and Scott

1 were married, they would live at 7409 E. 44<sup>th</sup> Avenue, Spokane,  
2 Washington, and that the ownership of that residence would remain the  
3 separate property of Scott Cryster until five years from the date of  
4 marriage.

5 On June 23, 2003, the IRS assessed Scott Cryster's unpaid federal  
6 tax liabilities for the years 1995 through 2000. On August 30, 2004,  
7 the IRS filed a Notice of Federal Tax Lien with the Spokane County  
8 Auditor. The tax lien arose from Scott Crytser's unpaid federal tax  
9 liabilities for the 1995, 1996, 1997, and 1998 tax years. On October  
10 29, 2004, and as a result of a purchase and sale agreement entered  
11 into on August 28, 2004 for the sale of the Subject Property,  
12 Plaintiff and Scott Crytser closed the sale of the Subject Property.  
13 The Plaintiff and Mr. Crytser were represented by an attorney during  
14 this real estate transaction.<sup>1</sup> Although the parties characterize the  
15 voluntariness of the payment differently, Mr. Crytser paid the tax  
16 lien in order to convey clear title to the buyers and to avoid a civil  
17 suit with the buyer of the Subject Property.

18 On November 10, 2004, the IRS issued a certificate of discharge  
19 regarding the federal tax lien on the Subject Property. The Complaint  
20 was filed on June 12, 2006.

21 The Complaint alleges that before the sale of the Subject  
22 Property, Plaintiff tried to secure the discharge or release of the  
23 federal tax lien as to her interest in the Subject Property. It is  
24 further alleged that the IRS refused to discharge or release the liens  
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26 <sup>1</sup>Ct. Rec. 14 at 2.

1 and "wrongfully seized plaintiff's community share of sale proceeds."  
2 Complaint, ¶¶ 3.14-15. According to the Complaint, the amount  
3 wrongfully seized was Plaintiff's community interest in the Subject  
4 Property, which she acquired on August 18, 2004, from her spouse Scott  
5 Crytser, as agreed upon in a prenuptial agreement. Although the  
6 Complaint and Amended Complaint, the latter filed on October 2, 2006,  
7 are captioned "Complaint for Refund of Taxes and Interest," the  
8 allegations and relief sought are consistent with a wrongful levy  
9 action under 26 U.S.C. §7426(a)(1) in addition to a refund action.  
10 The Amended Complaint appears to retract references to "community  
11 property" and replaces such terminology with Plaintiff's "one half  
12 interest" in the residence.

#### 13 DISCUSSION

14 Defendant argues that Plaintiff fails to distinguish two separate  
15 types of actions, refund action and wrongful levy action, in both the  
16 original and Amended Complaint. The Supreme Court in *Williams*  
17 distinguished between pre-deprivation and post-deprivation, with §  
18 1346(a)(1) identified as post-deprivation relief and § 7426(a)(1)  
19 identified as affording pre-deprivation relief. *Williams*, 514 U.S. at  
20 538. A claim for refund would logically be characterized as  
21 post-deprivation as one may not seek a refund on that which he or she  
22 has not yet paid to the government. As such, the two procedures  
23 could, under the appropriate facts, be considered mutually exclusive,  
24 representing separate stages in a procedural continuum. Additionally,  
25 as the present action involves a civil action on a claim for refund in  
26 addition to a wrongful levy claim, a plaintiff may not initiate such

1 an action unless such plaintiff has exhausted administrative remedies  
2 in pursuing such refund. *Williams*, 514 U.S. at 527; 26 U.S.C. §  
3 7422(a).

4 A. Wrongful Levy Claim and Subject Matter Jurisdiction

5 Defendant argues that a jurisdictional prerequisite to a 26  
6 U.S.C. §7426(a)(1) action is an actual levy by the IRS. Defendant  
7 further argues that Plaintiff cannot bring a wrongful levy action  
8 under §7426(a)(1) because there is no waiver of the United States'  
9 sovereign immunity where there has been no levy.

10 Plaintiff argues that neither she nor Mr. Crytser voluntarily  
11 arranged for the payment to the IRS in exchange for the discharge of  
12 the lien encumbering the real estate. Ct. Rec. 14 at 5. Where such  
13 payment is not made voluntarily, Plaintiff concludes that a levy  
14 occurred. *Id.* at 6.

15 The regulations limit wrongful levy actions to situations where  
16 the government had no business at all interfering with the third  
17 party's property right. *Sessler v. U.S.*, 7 F.3d 1449, (9<sup>th</sup> Cir. 1993).  
18 As the IRS has expounded in its regulations, a levy is wrongful if:  
19 (1) it's placed on property exempt under § 6334; (2) it wasn't placed  
20 on property in which the delinquent taxpayer had an interest; (3) it's  
21 invalid under §§ 6323 or 6324(a)(2) or (b); or (4) the plaintiff's  
22 interest in the property is senior to the federal lien and will be  
23 destroyed by the levy. 26 CFR § 301.7426-1(b). *Id.* (Footnote and  
24 citations omitted). Here, however unfair the situation may appear,

1 the IRS had the substantive right to place a levy<sup>2</sup> or lien on the  
2 property, and the Plaintiff doesn't contest the validity of the lien  
3 itself.

4 The Plaintiff has invoked the jurisdiction of the district court  
5 under 26 U.S.C. § 7426 which authorizes any person, other than the  
6 delinquent taxpayer, to bring a "wrongful levy" action. To state a  
7 claim under this section, the Plaintiff must show (1) an interest in  
8 or lien on the property, and (2) "that such property was wrongfully  
9 levied upon." 26 U.S.C. § 7426(a)(1). Plaintiff's claim that the levy  
10 was wrongful because the payment of the tax lien was not made  
11 voluntarily does not fit properly into any of the "wrongful levy"  
12 definitions under 26 CFR § 301.7426-1(b).

13 Under the principles of sovereign immunity, the United States is  
14 immune from lawsuits except where it has acted to waive this immunity.  
15 *See United States v. Dalm*, 494 U.S. 596, 608, 110 S.Ct. 1361, 108  
16 L.Ed.2d 548 (1999). Such a waiver by the United States must be  
17 unequivocal and "the terms of its consent to be sued in any court  
18 determine that court's jurisdiction to entertain the suit." *Id.*  
19 (*quoting United States v. Testan*, 424 U.S. 392, 399, 96 S.Ct. 948, 47  
20 L.Ed.2d 114 (1976) (*quoting United States v. Sherwood*, 312 U.S. 584,  
21 586, 61 S.Ct. 767, 85 L.Ed. 1058 (1941))). Further, "[i]t is the burden  
22 of the party who institutes a claim against the United States . . . to  
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24 <sup>2</sup>The Court uses the term levy as defined in Black's Law Dictionary  
25 as: "To impose or assess (a fine or a tax) by legal authority." Black's  
26 Law Dictionary 927 (8th ed.2004)

1 allege an act of Congress that authorizes the Court to entertain that  
2 specific claim." *Ridenbaugh v. Long*, 246 F.Supp.2d 849, 852 n. 1  
3 (S.D.Ohio 2002) (*citing Malone c. Bowdoin*, 349 U.S. 643, 645, 648  
4 (1962)).

5 As to Defendant's defense of sovereign immunity, §7426 is not a  
6 broad grant of jurisdiction for suit brought by any third-party  
7 interest-holder; it only waives immunity when there's been a "wrongful  
8 levy." As to the wrongful levy claim, Plaintiff's theory does not  
9 measure up to the requirements of a §7426(a)(1) wrongful levy suit.  
10 As such, plaintiff's claim in a wrongful levy posture, doesn't provide  
11 the necessary waiver of sovereign immunity. This claim must therefore  
12 be dismissed.

13 B. Refund Claim and Subject Matter Jurisdiction

14 Concerning jurisdiction, the Court construes the Complaint and  
15 Amended Complaint to contain a claim seeking refund under 28 U.S.C. §  
16 1346(a). This statute, 28 U.S.C. § 1346, does not say that only the  
17 person against whom the tax is assessed may sue, but instead, uses  
18 broad language such as "any civil action against the United States;"  
19 "any sum alleged to have been excessive;" and "in any manner  
20 wrongfully collected." The Court finds the broad language of §1346,  
21 provides the necessary waiver of sovereign immunity for the district  
22 court to exercise jurisdiction over Plaintiff's refund action. Thus,  
23 the Defendant's alternative motion to dismiss based on lack of subject  
24 matter jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)  
25 as to the refund claim must be denied.

1 Defendant next argues that Plaintiff, a third party challenging a  
2 federal tax lien, cannot bring a civil action for refund under 28  
3 U.S.C. §1346(a)(1) without exhausting the requirements of 26 U.S.C.  
4 §6325 and §7426(a)(4). Defendant contends that the proper provision  
5 for seeking judicial review in this case is §7426(a)(4), which  
6 authorizes a third-party with interest in property subject to a  
7 federal tax lien to challenge the United States' interest in a post-  
8 deprivation proceeding. However under §7426(a)(4), any civil action  
9 for a determination of the value of the United States' interest in  
10 property must be brought within 120 days after the issuance of a  
11 certificate of discharge. Plaintiff argues that although she didn't  
12 exhaust the administrative requirements under §§ 6325 and 7426, this  
13 provision, §7426(a)(4), does not apply to her because the certificate  
14 of discharge was issued to Mr. Crytser rather than to her. Ct. Rec.  
15 14 at 6.

16 Defendant responds that if Plaintiff claimed to be an owner of  
17 the Subject Property, she should have sought a certificate of  
18 discharge in her own name after the disputed funds were deposited with  
19 the IRS. Ct. Rec. 18 at 5. Defendant concludes that Plaintiff  
20 failed to exhaust administrative remedies under §6325(b)(4) and bring  
21 a timely action under §7426(a)(4) before this refund suit could be  
22 brought under §1346(a)(1). To support its conclusion, Defendant's  
23 discussion includes cases addressing the interplay of §§ 6325(b)(4)  
24 and 7426(a)(4) and the holding of *United States v. Williams*, 514 U.S.

1 527, 115 S.Ct. 1611, 131 L.Ed.2d 608 (1995).<sup>3</sup> The Court agrees with  
2 Defendant that the case law does support Defendant's argument that a  
3 third-party must first exhaust the remedies provided by §§ 6325(b)(4)  
4 and 7426(a)(4) before bringing a refund suit under § 1346(a)(1).

5 Plaintiff alleges, however, that she has exhausted her administrative  
6 remedies required under this statute. Plaintiff, in her Complaint and  
7 Amended Complaint, states that on or about July 15, 2005, a "Claim for  
8 Wrongfully Levied Property" was sent by certified mail to the

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10 <sup>3</sup>Congress enacted §3106 of the Internal Revenue Service  
11 Restructuring & Reform Act of 1998 to address the problem that the Court  
12 faced in *Williams*. This amendment added subsection (b)(4) to 26 U.S.C.  
13 § 6325 and subsection (a)(4) to 26 U.S.C. § 7426. The new statutory  
14 scheme of 26 U.S.C. § 6325(b)(4) requires the IRS to issue a certificate  
15 of discharge as a matter of right to third parties under specified  
16 circumstances and 26 U.S.C. § 7426(a)(4) provides a judicial remedy.  
17 Pursuant to 26 U.S.C. § 6325(b)(4)(A), the third party has the right to  
18 obtain a certificate of discharge by applying to the Secretary of the  
19 Treasury for such a certificate and either depositing cash or furnishing  
20 a bond sufficient to protect the lien interest of the United States. The  
21 Secretary does not have the discretion to refuse to issue a certificate  
22 of discharge if this procedure is followed, thus curing the defect in  
23 this remedy discussed in *Williams*. See *City of Richmond, Ky. v. U.S.*,  
24 348 F.Supp.2d 807, 812-13 (E.D.Ky. 2004).



1 defendant agency as required by 26 U.S.C. 7426(h)(2). See Amended  
2 Complaint, ¶ 3.16.

### 3 ANALYSIS OF LAW

4 A revenue ruling, Rev. Rul. 2005-50, clarifies that, in light of  
5 amendments to §§ 6325 and 7426 of the Code made by the IRS  
6 Restructuring and Reform Act of 1998, a person not liable for the  
7 underlying tax may not file a refund action under the holding of  
8 *United States v. Williams*, 514 U.S. 527 (1995). See Rev. Rul.  
9 2005-50, 2005-30 I.R.B. 124, 2005 WL 1710987 (IRS RRU).

10 In this case, Mr. Crytser, and not Plaintiff, was liable for the  
11 underlying taxes, which were assessed prior to the date Plaintiff's  
12 property ownership vested pursuant to the Prenuptial Agreement.  
13 Section 6321 provides that if any person liable to pay any tax  
14 neglects or refuses to pay after notice and demand for payment, the  
15 amount due shall be a lien in favor of the United States on all  
16 property and rights to property, whether real or personal, belonging  
17 to that person. Section 6322 provides that once the federal tax lien  
18 has arisen, it continues until the tax liability giving rise to the  
19 lien is paid or becomes unenforceable by reason of lapse of time. See  
20 I.R.C. § 6502 (collection after assessment). In order for the lien  
21 imposed by § 6321 to be valid against certain persons, notice must be  
22 filed by the Service in accordance with § 6323. This notice  
23 requirement is pertinent as to any "purchaser" under §6323(a).

24 Section 6325(b) provides several procedures for discharging  
25 property subject to a lien imposed by § 6321. Under § 6325(b)(2)(A),  
26 the IRS may issue a certificate of discharge pursuant to which the

1 government is paid the value of its lien interest in the property to  
2 be discharged. Persons who request a certificate of discharge under  
3 section 6325(b)(2)(A) may not seek judicial review of the IRS's  
4 valuation determination through a refund action under 28 U.S.C. §  
5 1346(a)(1). See *City of Richmond v. United States*, 348 F. Supp. 2d  
6 807, 813-14 (E.D. Ky. 2004). See Rev. Rul. 2005-50, 2005-30 I.R.B.  
7 124, 2005 WL 1710987 (IRS RRU).

8 A second discharge procedure is set forth in section 6325(b)(4),  
9 under which the owner of property subject to a federal tax lien (other  
10 than the person liable for the tax) has the right to obtain a  
11 discharge upon either depositing cash or furnishing a bond acceptable  
12 to the IRS in the amount the Service has determined to be the value of  
13 the lien interest of the United States. I.R.C. § 6325(b)(4)(A). The  
14 IRS must refund the amount deposited or release the bond, to the  
15 extent that it determines that the taxpayer's unsatisfied liability  
16 giving rise to the lien can be satisfied from a source other than  
17 property owned (or owned in part) by the third party, or to the extent  
18 that it determines that the value of the interest of the United States  
19 in the property is less than the IRS's prior determination of value.  
20 I.R.C. § 6325(b)(4)(B). Any amount not used to satisfy the liability  
21 shall be refunded to the owner of the property. I.R.C. §6325(b)(4)(C).  
22 Id.

23 The owner of the property has 120 days after the date the  
24 certificate of discharge under section 6325(b)(4) is issued to file a  
25 substitution of value action in district court challenging the IRS's  
26 determination of the value of the lien interest of the United States.

1 I.R.C. § 7426(a)(4). If the owner of the property does not challenge  
2 the IRS's determination within the 120-day period, the IRS shall,  
3 within 60 days after the expiration of the 120-day period, apply the  
4 amount deposited or collected on the bond to the extent necessary to  
5 satisfy the liability secured by the lien. If the owner successfully  
6 challenges the IRS's determination of the value of the lien interest  
7 of the United States, the court shall enter judgment ordering a refund  
8 of the amount deposited or a release of the bond to the extent that  
9 the amount of the deposit or bond exceeds the value of the lien  
10 interest determined by the court. I.R.C. § 7426(b)(5).

11 Sections 6325(b)(4) and 7426(a)(4) were enacted as part of the  
12 Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L.  
13 No. 105-206, 112 Stat. 685, in response to the inadequate remedy  
14 problem identified by the Supreme Court in *United States v. Williams*,  
15 514 U.S. 527 (1995). See S. Rep. No. 105-174, at 54-55 (1998),  
16 reprinted in 1998-3 C.B. 537, 590-91. In *Williams*, the Court held that  
17 a third party who paid another person's tax liability under protest  
18 had standing to bring a refund action under 28 U.S.C. § 1346(a)(1).  
19 The Court noted that the third party "had no realistic alternative to  
20 payment of a tax she did not owe, and we do not believe that Congress  
21 intended to leave parties in respondent's position without a remedy."  
22 *Williams*, 514 U.S. at 529 (footnote omitted).

23 Sections 6325(b)(4) and 7426(a)(4) provide the remedy that was  
24 unavailable to the third party in *Williams*. Section 7426(a)(4)  
25 specifically states that "[n]o other action may be brought by such  
26 person for such a determination." Additionally, section 7426(a)(4)

1 imposes a strict 120-day time limit for filing a substitution of value  
2 action in district court challenging the IRS's determination of value.  
3 Permitting a third party to bring another action, such as a refund  
4 suit, would conflict with the 120-day limit Congress imposed on  
5 actions brought under section 7426(a)(4). Rev. Rul. 2005-50, 2005-30  
6 I.R.B. 124, 2005 WL 1710987 (IRS RRU) (citing *City of Richmond*, 348 F.  
7 Supp. 2d at 813-14.)

8       The cause of action Congress provided in section 7426(a)(4) is  
9 limited to cases in which a third party has received a certificate of  
10 discharge from the IRS under section 6325(b)(4). *Wilson v. United*  
11 *States*, 2004 WL 790220, at \*2, 93 AFTR 2d 2004-1390 (E.D. Tenn. Feb.  
12 24, 2004) ("On its face, 26 U.S.C. § 7426(a)(4) limits itself to  
13 permitting claims pursuant to 6325(b)(4)."). Courts lack subject  
14 matter jurisdiction over cases brought challenging the IRS's valuation  
15 determination if the certificate of discharge was sought under section  
16 6325(b)(2), rather than section 6325(b)(4). See Rev. Rul. 2005-50,  
17 2005-30 I.R.B. 124, 2005 WL 1710987 (IRS RRU) (citing *Wilson*, 2004 WL  
18 790220, at \*2.)

19       In the present case, Plaintiff is a third party who did not seek  
20 a certificate of discharge in her own name or use the available  
21 remedies before bringing the present refund suit. Plaintiff's "Claim  
22 for Wrongfully Levied Property" sent to the Defendant on July 15, 2005  
23 was not the proper procedure pursuant to § 6325. There is also no  
24 evidence Plaintiff deposited cash or furnished a bond acceptable to  
25 the IRS pursuant to § 6325. Revenue Ruling 2005-50 supports the  
26 Defendant's argument that a third-party must first exhaust the

1 remedies provided by §§ 6325(b)(4) and 7426(a)(4) before bringing a  
2 refund suit under § 1346(a)(1).

3 Although Plaintiff focuses on the date the Notice of Federal Lien  
4 was recorded with the county recorder's office, the validity and  
5 priority of the federal tax lien against Plaintiff's interest does not  
6 depend on such filing of the notice of the lien. Furthermore,  
7 Plaintiff cannot be considered a "purchaser" under §6323(a) based on  
8 the Prenuptial Agreement as she did not pay "adequate and full  
9 consideration in money or money's worth" for her interest in the  
10 property, which vested on August 18, 2004.

11 Contrary to Plaintiff's argument, when the IRS made the  
12 assessment against Mr. Crytser on June 23, 2003, the tax lien attached  
13 to all of Mr. Crytser's property, including the subject real property.  
14 See Amended Complaint, Exh. C; 26 U.S.C. §§§ 6321, 6322, 6323. See  
15 also *United States v. McDermott*, 507 U.S. 447, 448 (1993); *TKB Int'l*  
16 *Inc. v. United States*, 995 F.2d 1460, 1463 (9th Cir.1993) (citation  
17 omitted); *Miller v. United States*, 763 F.Supp. 1534, 1539 n. 8  
18 (N.D.Cal.1991) (Patel, J.) (noting that "[n]umerous cases stand  
19 directly for the proposition that a federal tax lien arises when the  
20 IRS makes an assessment coupled with a demand for payment." (citations  
21 omitted)). Although the IRS did not record the tax lien until August  
22 30, 2004, the lien was valid as against Mr. Crytser-the taxpayer-as of  
23 June 23, 2003. *TKB Int'l Inc.*, 995 F.2d at 1463 (noting that the IRS  
24 does not have to file notice of a federal tax lien in order for the  
25 lien to be valid as against the taxpayer). However, as discussed more  
26 fully below, if the IRS does not record a notice of a federal tax

1 lien, this may affect the priority of the tax lien vis-a-vis certain  
2 third party interests in the property. *Id.*

3 Under the first in time principle, the tax lien-which attached on  
4 June 23, 2003-had priority over any interest plaintiff may have had in  
5 the subject property as of August 18, 2004. *See McDermott*, 507 U.S. at  
6 449. Consequently, the interest-if any-that plaintiff took in the  
7 property on the date of her marriage to Mr. Crytser was subject to the  
8 federal tax lien. However, it appears that at the time the Internal  
9 Revenue Service lien arose, the Plaintiff had no property interest to  
10 which it could attach.

11 Section 6323 of the IRC governs the priority of interest between  
12 a federal tax lien arising under § 6321 and certain third-party claims  
13 to the property to which the federal tax lien has attached. Section  
14 6323(a) provides that "[t]he lien imposed by § 6321 shall not be valid  
15 as against any purchaser, holder of a security interest, mechanic's  
16 lienor, or judgment lien creditor until notice thereof which meets the  
17 requirements of subsection(f) has been filed by the Secretary."  
18 Because it is clear that plaintiff cannot qualify as a holder of a  
19 security interest, mechanic's lienor, or judgment lien creditor, the  
20 Court looks at whether Plaintiff might qualify as a purchaser under  
21 § 6323(a). If Plaintiff is found to be a purchaser, the tax lien may  
22 be displaced under certain circumstances. In addressing the question  
23 of whether Plaintiff qualifies as a "purchaser" under § 6323(a),  
24 "[f]ederal law alone is decisive." *Berg v. United States*, 121 F.3d  
25 535, 537 (9th Cir.1997) (holding that a "good faith purchaser" under  
26 state law is not necessarily a purchaser for "full and adequate

1 consideration" under section 6323(a) of the IRC (*citing In re Walter*,  
2 45 F.3d 1023, 1030 (6th Cir.1995)).

3 In the present action, Plaintiff fails to meet any of the  
4 definitions of purchaser under § 6323(a). For purposes of this  
5 section, a "purchaser" is defined as "a person who, for adequate and  
6 full consideration in money or money's worth, acquires an interest  
7 (other than a lien or security interest) in property which is valid  
8 under local law against subsequent purchasers without actual notice."  
9 Plaintiff is not such a purchaser. As such, Plaintiff's interest  
10 would not have priority over the tax lien. Once a federal tax lien is  
11 created, it "continues to attach to a taxpayer's property regardless  
12 of any subsequent transfer of the property." *United States v. Donahue*  
13 *Indus., Inc.*, 905 F.2d 1325, 1330 (9th Cir.1990).

14 In the letter dated October 26, 2004 to Plaintiff's husband Mr.  
15 Crytser, the IRS clearly states in its "Conditional Commitment to  
16 Discharge Certain Property From Federal Tax Lien" that upon receipt of  
17 a certified check, it would issue a certificate discharging the  
18 property against the taxpayer named in the letter, Scott W. Crytser.  
19 See Amended Complaint, Exh. G.

20 Based on the foregoing, the court finds that the tax lien  
21 attached to the Subject Property on June 23, 2003 when the IRS made an  
22 assessment against Mr. Crytser. Given that Plaintiff does not qualify  
23 as a "purchaser" under § 6323(a) of the IRC, the interest that she  
24 received in the subject property by virtue of the Prenuptial Agreement  
25 cannot trump the federal tax lien, which was recorded on August 30,  
26 2004. When Mr. Crytser conveyed an interest in the subject property to

1 Plaintiff on August 18, 2004, she took the property subject to the tax  
2 lien. Accordingly, the court finds that as a matter of law, Plaintiff  
3 is not entitled to a refund of the sum Mr. Crytser deposited with the  
4 IRS on October 29, 2004 to discharge the federal tax lien.

#### 5 USA'S OBJECTIONS TO DECLARATIONS

6 Defendant moves to strike portions of the declarations of  
7 Plaintiff Nina Crytser and Declaration of Scott Crytser that are  
8 allegedly not relevant to determining whether jurisdiction exists for  
9 a wrongful levy action under 26 U.S.C. §7426(a)(1). Specifically,  
10 Defendant seeks to strike the statements in the declarations about the  
11 purported intent of the parties in signing the Prenuptial Agreement.

12 Declarations and exhibits are relevant to the extent they have a  
13 tendency to make the existence of any material fact more or less  
14 probable. See Fed.R.Evid. 401. Further, the Court looks to the  
15 unambiguous language in the Prenuptial Agreement which cannot be  
16 modified by the subject declarations under *Berg v. Hudesman*, 115  
17 Wash.2d 657, 801 P.2d 222 (1990). The Court agrees that the disputed  
18 statements are not relevant as to the jurisdictional matters, however,  
19 the declarations will not be stricken.

#### 20 CONCLUSION

21 The federal tax lien arose pursuant to § 6321 of the Internal  
22 Revenue Code, 26 U.S.C. § 6321. See *In re Kimura*, 969 F.2d 806, 809  
23 (9th Cir.1991) (finding that when the IRS assesses civil penalties for  
24 taxes owed pursuant to section 6672 of the IRC, a federal tax lien  
25 attaches to the all of the taxpayer's property pursuant to § 6321 of  
26 the IRC). The parties do not genuinely dispute that Mr. Crytser, the



1 taxpayer, held full legal and equitable title to the subject real  
2 property on June 23, 2003, the date of the assessment. Consequently,  
3 Mr. Crytser held a property interest to which the tax lien could  
4 properly attach. *Aquilino v. United States*, 363 U.S. 509, 512 (1960).  
5 Contrary to Plaintiff's argument, it is irrelevant that she had an  
6 interest that vested in August 2004. The tax lien attached when Mr.  
7 Crytser held full legal and equitable title to the subject property.  
8 In light of the foregoing, this Court concludes that Plaintiff failed  
9 to exhaust administrative remedies under §6325(b)(4) and bring a  
10 timely action under §7426(a)(4) before initiating this refund suit  
11 under §1346(a)(1). The court therefore must dismiss Plaintiff's  
12 action for refund. Additionally, Plaintiff's wrongful levy claim must  
13 also be dismissed based on lack of subject matter jurisdiction.  
14 Accordingly,

15 **IT IS ORDERED** that Defendant United States' Motion to Dismiss for  
16 Lack of Subject Matter Jurisdiction and For Failure to State a Claim  
17 for Which Relief Can Be Granted, Ct. Rec. 5, is **GRANTED**. The wrongful  
18 levy claim is dismissed for lack of subject matter jurisdiction. The  
19 refund action is dismissed under Rule 12(b)(6) for the foregoing  
20 reasons.

21 The District Court Executive is directed to file this Order;  
22 provide copies to plaintiffs and counsel of record; ENTER JUDGMENT  
23 CONSISTENT WITH THIS ORDER; and CLOSE FILE.

24 **DATED** this 2nd day of November, 2006.

25 *s/Lonny R. Suko*

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LONNY R. SUKO

UNITED STATES DISTRICT JUDGE

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